

Procedural Options for Next Steps on ME WQS

Background

On December 19, 2016, EPA promulgated 96 federal human health criteria (HHC) for tribal waters in Maine, as well as several WQS that applied statewide or outside tribal waters. These WQS took effect on January 18, 2017. The WQS address EPA's 2015 disapprovals of Maine's corresponding WQS and the Administrator's 2016 necessity determination that many of Maine's human health WQS do not protect the designated use of sustenance fishing. EPA also approved a sustenance fishing designated use for waters in Indian lands as part of the 2015 decision.

EPA is currently defending its 2015 disapprovals related to the HHC for tribal waters, along with its approval of the sustenance fishing designated use, in district court in a challenge brought by the State of Maine. Maine has not challenged the final, promulgated standards. Maine's opening brief in the litigation is due May 15th. EPA's opening brief is due August 28th.

Additionally, the Governor of Maine and a group of three dischargers separately submitted petitions ("Petitions") for EPA to withdraw its 2015 decisions on Maine's WQS and to repeal its 2016 federally promulgated WQS.

This paper presents *procedural* options for how to proceed in response to the petitions and in the litigation.

Options

Atty-Client / Atty WP / Deliberative / Ex.5

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